

BEFORE THE STATE WATER CONTROL BOARD

Fauquier County Water and Sanitation)
Authority,)
 Petitioner.)
)
In re: Water Quality Management)
Planning Regulation, 9VAC25-720-50.C.)
_____)

**SB 1022 / HB 2074 PETITION TO EXTEND CTO DEADLINE FOR THE
VINT HILL WASTEWATER TREATMENT PLANT**

Pursuant to Senate Bill 1022 approved March 30, 2009 (2009 Acts of Assembly Chapter 704) and House Bill 2074 approved March 27, 2009 (2009 Acts of Assembly Chapter 361), the Fauquier County Water and Sanitation Authority (“FCWSA”) hereby petitions the State Water Control Board (“SWCB” or “Board”) to extend the current deadline under the Water Quality Management Planning (“WQMP”) Regulation at 9VAC25-720-50.C., Note (8), by which a certificate to operate (“CTO”) must be obtained for the Vint Hill Wastewater Treatment Plant (the “Vint Hill Plant”) at the higher design flow of 0.95 million gallons per day (“MGD”) now under construction. Although the above-referenced legislation provides for extensions of up to five years, FCWSA only requests an extension of one year to December 31, 2011. In accordance with the Virginia Code § 2.2-4007 and 9VAC25-11-60, FCWSA respectfully submits the following information.

I. PETITIONER’S NAME AND CONTACT INFORMATION

Fauquier County Water and Sanitation Authority
7172 Kennedy Road
Vint Hill Farms
Warrenton, Virginia 20187-3907

Attention: Barney E. Durrett, Jr., General Manager
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Phone: (540) 349-2092

II. SUBSTANCE AND PURPOSE OF THE REQUESTED RULEMAKING

A. Requested Amendment

For the reasons set forth herein, FCWSA respectfully requests that the SWCB amend footnote (8) to the nutrient allocation table in 9VAC25-720-50.C., to extend the CTO deadline by one (1) year from December 31, 2010 to December 31, 2011. If approved, footnote (8) would be amended as follows:

(8) Fauquier Co. W&SA-Vint Hill STP; waste load allocations (WLAs) based on a design flow capacity of 0.95 million gallons per day (MGD). If plant is not certified to operate at 0.95 MGD design flow capacity by ~~12/31/10~~ 12/31/11, the WLAs will decrease to TN=5,482 lbs/yr; TP=548 lbs/yrs, based on a design flow capacity of 0.6 MGD.

B. Background

FCWSA is a public body created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* FCWSA's mission is to provide essential water and wastewater utility services to its customers at the lowest practicable rates, consistent with Fauquier County's Comprehensive Plan and with all applicable federal and state legal requirements. The Authority owns and operates three municipal wastewater treatment plants, including the Vint Hill Plant.

The Vint Hill Plant is located in Fauquier County near the Town of Warrenton and on the 700-acre site of the former U.S. Army base known as Vint Hill Farms Station. Following closure of Vint Hill Farms Station, the Department of the Army conveyed Vint Hill Farms Station to the Vint Hill Farms Economic Development Authority ("EDA"), which had been

created pursuant to the Va. Code § 15.2-6300 *et seq.* The EDA is authorized by state law to redevelop Vint Hill Farms Station for the best economic benefit of the residents of the County.

On February 25, 2000, the EDA and FCWSA entered into a wastewater facilities purchase agreement (the “Wastewater Facilities Agreement”) providing for the conveyance of the Vint Hill Plant to FCWSA. The agreement acknowledges that “the provision of cost-effective, assured sewer services is a major component for the successful redevelopment of Vint Hill” and requires FCWSA to provide 0.4 MGD of capacity to the EDA above and beyond the capacity required to serve other County residents in the surrounding New Baltimore Service District.

The Wastewater Facilities Agreement provided for the upgrade of the original Vint Hill Plant, which while under U.S. Army ownership was an old trickling filter plant consisting of primary clarification, a single trickling filter unit, clarification and disinfection. After taking over the Vint Hill Plant, FCWSA performed a major upgrade of the treatment process using sequencing batch reactors designed to achieve state-of-the-art nutrient removal under certain operating conditions utilized in the design process. The upgraded facility, which has a design capacity of 0.6 MGD and meets the stringent requirements of the SWCB’s Occoquan Policy Regulation, 9VAC25-410, not only addressed existing compliance issues associated with the outdated technology inherited from the U.S. Army, but also enabled three privately-owned wastewater treatment plants to be taken offline. The 0.6 MGD upgrade was designed and constructed to accommodate expansion to 0.95 MGD in accordance with the capacity provisions of the Wastewater Facilities Agreement. The 0.95 MGD facility is now under construction.

Under the WQMP Regulation, in subsection 9VAC25-720-50.C. regarding nutrient wasteload allocations for Potomac-Shenandoah River Basin, the Vint Hill Plant has been

assigned allocations for the 0.95 MGD facility for Total Nitrogen in the amount of 8,680 pounds per year (“lbs/yr”) and Total Phosphorus in the amount of 868 lbs/yr. These allocations are subject to footnote (8), which provides:

(8) Fauquier Co. W&SA-Vint Hill STP: waste load allocations (WLAs) based on a design flow capacity of 0.95 million gallons per day (MGD). If plant is not certified to operate at 0.95 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN=5,482 lbs/yr; TP=548 lbs/yr, based on a design flow capacity of 0.6 MGD.

FCWSA is petitioning the SWCB pursuant to the above-referenced authorities to obtain a short extension (one year) necessary beyond December 31, 2010 to complete the expansion of the Vint Hill Plant without loss of the associated nutrient allocations.

C. FCWSA’s Facility Expansions were the “Poster Child” for HB 2074 and SB 1022

SB 1022 was introduced by Senator Hanger, chairman of the Rappahannock River Basin Commission (the “Commission”). HB 2074 was introduced by Delegate Scott, also a member of the Commission. To the best of FCWSA’s knowledge, the impetus for both bills developed from discussions within the Commission about the challenges with completing plant expansions in the adverse economic climate and the critical need to provide sufficient treatment capacity for denser, smart growth-type development in state-mandated Urban Development Areas. Furthermore, during the course of this discussion, the Fauquier County plants were the prime examples. To the best of FCWSA’s knowledge based on the personal observations of legal counsel during the 2009 House and Senate committee hearings and related legislative negotiations, the same issues and examples were the drivers for the legislation. Accordingly, FCWSA respectfully submits that the current petition process was intended to address and resolve the needs of FCWSA’s plants subject to the limitation no CTO deadline extension

exceed five (5) years and the additional requirement that compliance with the underlying nutrient allocations would be required either end-of-pipe or by trading if necessary.

D. Construction of the Expansion Is Underway and Will Be Completed No Later Than During Calendar Year 2011

FCWSA respectfully submits that it would be appropriate to give special consideration to the Vint Hill Plant in that the facility is currently under construction. After overcoming the financial challenges that delayed the start of the expansion (described below), FCWSA issued Notice to Proceed to the contractor in March 2009 and has been diligently managing the construction process. As a result, construction is proceeding well and FCWSA is actively managing the project to reach completion if possible during 2010. Taking into account potential construction delays, FCWSA estimates that construction would be concluded no later than mid-2011. This anticipated timeline for substantial completion of construction should enable a CTO to be issued by DEQ during 2011. Absent approval of this petition, the combination of FCWSA's construction schedule and the current CTO deadline presents a substantial risk of stranding the expanded capacity (0.35 MGD above the existing capacity of 0.6 MGD) without corresponding nutrient allocations. It is this risk associated with timely completion by the construction contractor that this petition seeks to mitigate through a one-year extension of the CTO deadline. FCWSA is committed to completing the project expeditiously and even if this petition were granted FCWSA will strive to complete construction during 2010.

E. FCWSA Made Good Faith Efforts to Initiate and Complete Construction by the December 31, 2010 CTO Deadline

Though not required by the legislation, FCWSA wishes to assure the SWCB that FCWSA made good faith efforts to initiate construction of the Vint Hill Plant to 0.95 MGD

expansion project earlier than actually occurred and in line with the original (existing) CTO deadline of December 31, 2010. This included the following steps, among others.

FCWSA initiated the design process in a timely manner. FCWSA awarded a design contract to Rummel, Klepper & Kahl, LLP (“RK&K”) in October 2007. RK&K completed preliminary engineering in 2008. RK&K submitted Plans and Specifications as required by the Sewage Collection and Treatment Regulations to DEQ in October 2008. The Plans and Specifications were approved by DEQ through a Certificate to Construct issued in February 2009.

FCWSA was confronted with major financing challenges, however, and a construction contract could obviously not be awarded until these challenges were resolved and financing was in place. As a small rural utility (FCWSA has only 3,586 sewer accounts) that is independent of the County government, FCWSA is limited financially in terms of its ability to self-fund expansion projects. As a result, the standard method of financing plant expansions at FCWSA plants has been through developer agreements under which one or more developers provides the necessary financial resources to undertake a major capital project. Ironically, the footnote (8) CTO deadline was both the reason for proceeding expeditiously and a major complicating factor in negotiating a financing plan with the affected developers in the New Baltimore Service District, who were concerned that a financial investment in capacity would be at risk due to the potential loss of nutrient allocation under the footnote, should construction not be completed and a CTO issued by DEQ by December 31, 2010. Ultimately, the standard method of financing failed.

Another major challenge in the financing effort has been the delay in securing partial State grant funding through the Water Quality Improvement Fund (“WQIF”), which as a small

rural utility was critical to this expensive nutrient removal facility. FCWSA also applied for WQIF grant funding in a timely manner by submitting a grant application to DEQ in August 2008. To date, FCWSA and DEQ have not yet reached agreement on an appropriate grant due to a disagreement over whether the design capacity should be funded through the WQIF as a “reasonable and necessary” project. FCWSA will be continuing to seek to resolve this issue and finalize a WQIF grant agreement.

In the meantime, FCWSA is compelled to undertake, and is undertaking, this project for several reasons. First, FCWSA is contractually obligated to provide wastewater capacity and service in excess of the current 0.6 MGD design capacity. As mentioned above, the Wastewater Facilities Agreement between FCWSA and the EDA contractually obligates FCWSA to provide 400,000 gallons per day (“GPD”) of capacity to the EDA. Under the Brookside Development Agreement dated May 28, 2002 and related litigation Settlement Agreement dated February 9, 2007, FCWSA is contractually obligated to provide 982 connections which using FCWSA’s standard unit value of 260 gallons per day per connection equates to 255,320 GPD of flow at the Vint Hill Plant. The developer under the Brookside Development Agreement has paid FCWSA a total of approximately \$9 million for the ability to make the connection to the public sewer system. These two contractual obligations alone amount to 655,320 GPD, or 0.65 MGD, which exceeds the current facility design of 0.60 MGD.

Second, this 0.65 MGD amount does not take into account any capacity to serve other County residents in the surrounding New Baltimore Service District. The Fauquier County Comprehensive Plan establishes a build-out need of more than 1.2 MGD of wastewater capacity for the New Baltimore Service District. This is relatively low amount of development and expansion based on local policies and preferences. Of that low amount, the current Vint Hill

expansion to 0.95 MGD would only provide about one-half of the capacity needed beyond the current design capacity of 0.6 MGD. Flows would exceed the 0.95 MGD now under construction by just providing service at the “by right” zoning levels within the New Baltimore Service District (i.e., without accommodating the increased density and ERCs that typically accompany rezoning and which are encouraged by recent state laws promoting concentrated “smart growth” type development).

Ultimately, the foregoing financial challenges and the capacity needs led to a break from the financing methods customary in this utility. This change consisted of the County government, at its option, stepping in to finance this critical project itself at a cost of approximately \$6 million. The fact that the County did so – and did so even in the absence of an executed WQIF grant agreement and even in midst of the current economic crisis – confirms the critical need and importance of the 0.95 MGD facility.

Upon the County’s injection of the required financing, FCWSA promptly awarded a construction contract on February 23, 2009 to Pizzagalli Construction Company. Construction is proceeding expeditiously. Relevant documentation of FCWSA’s construction effort is attached hereto.

F. The Expansion Is Essential to the Ongoing Economic Recovery from the U.S. Army’s Closure of Vint Hill Farms Station

As described above, provision of sufficient wastewater capacity is integral to the redevelopment of the closed Army base. This entire effort is undertaken pursuant to Va. Code § 15.2-6300 *et seq.* regarding Authorities for Development of Former Federal Areas. In the section entitled “Declaration of Policy for Authorities Created by the Governor,” a state policy is established providing that:

[t]he proper development of such areas industrially and otherwise ***is required*** so that local governments may derive revenues with which to render necessary services to their citizens and so that industrial development; job creation; and housing, recreational, commercial, educational and other economic and social development may be fostered and stimulated to prevent the creation of blighted areas in the Commonwealth with resultant injury to all. The creation by this chapter and ***operation of authorities pursuant to this chapter are governmental functions of the gravest concern to the Commonwealth*** and the need for this enactment being a matter of legislative policy such need is hereby declared as a matter of legislative determination.

Va. Code § 15.2-6300 (emphasis added). The redevelopment effort for Vint Hill Farms Station is ongoing, and that effort along with the existing contractual agreement in support of it is premised on the availability of the 0.95 MGD of capacity currently under construction. FCWSA respectfully submits that this existing process is in direct furtherance of a governmental function “of the gravest concern” and, accordingly, this petition deserves special consideration.

III. LEGAL AUTHORITY

Proper legal authority exists for this petition under Senate Bill 1022 approved March 30, 2009 (2009 Acts of Assembly Chapter 704); House Bill 2074 approved March 27, 2009 (2009 Acts of Assembly Chapter 361); the Administrative Process Act, specifically Va. Code § 2.2-4007 regarding petitions for amended regulations; and the SWCB’s Public Participation Guidelines, specifically section 9VAC25-11-60 regarding petitions for rulemaking.

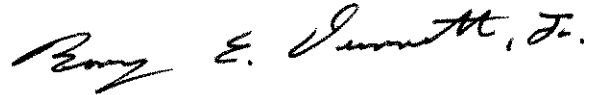
IV. SUPPORTING DOCUMENTS (ATTACHED AS EXHIBITS)

- A. DEQ Certificate to Construct (February 17, 2009)
- B. FCWSA Notice to Proceed to Pizzagalli Construction Company (March 23, 2009)
- C. Construction Progress Meeting No. 1 – Final Minutes (April 22, 2009)
- D. Construction Progress Meeting No. 2 – Final Minutes (May 27, 2009)

V. CONCLUSION

For the foregoing reasons, FCWSA's petition should be granted and the deadline for FCWSA to obtain a CTO for the expansion of the Vint Hill Plant's capacity to 0.95 MGD should be extended by one year to December 31, 2011.

Respectfully submitted,

A handwritten signature in cursive script, reading "Barney E. Durrett, Jr.", written in black ink.

Barney E. Durrett, Jr.

Date: July 8, 2009